IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

Crl.MC.No. 491 of 2007()

C.C.NO.2137 OF JFCM-III, KOTTAYAM.
CRIME NO.326 OF 2002 OF KOTTAYAM WEST POLICE STATION.

.....

PETITIONER: PETITIONER

JAYAKUMAR, AGED 42 YEARS,S/O.SURENDRAN,
VAYALIL VEEDU,KADAKOM P.O,CHIRAYINKEEZU,
THIRUVANANTHAPURAM.

BY ADV. SRI.SUJITH MATHEW JOSE

RESPONDENTS: RESPONDENTS

---

1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. S.I OF POLICE, KOTTAYAM WEST POLICE
STATION.

3. BIJU,S/O.ACHUTHAN,KAMBIKKAKATHU VEEDU,
MANCHADIMOODU,CHIRAYINKEEZHU,THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.491 of 2007

Dated this the 26th day of February, 2007

ORDER

The petitioner is the complainant in a prosecution for the offence punishable under Section 379 I.P.C. The case relates to theft of a vehicle belonging to the petitioner. The petitioner applied for and was granted custody of the vehicle pending disposal of the case. According to the petitioner, even though the crime was registered as early as in 2002, the case was not making any progress for the reason that the accused persons who face indictment are absconding and are not available for trial. It is, in these circumstances, that the petitioner has come to this Court with a prayer that the condition imposed, when the vehicle was released to him, that he should not alienate the vehicle may be set aside.

2. I am certainly of the opinion that the petitioner must approach the learned Magistrate with this prayer, before rushing to this Court with this petition under Section 482 Cr.P.C. The petitioner is certainly entitled to now request the learned Magistrate to consider his prayer to delete the condition that he should not dispose of the vehicle subject to appropriate safeguards. The learned Magistrate must pass appropriate orders after taking into consideration all relevant circumstances including the decision of the Supreme Court in **Sunder bhai Ambalal Desai v. State of Gujarat** [2003 (2) KLT 1089].

3. This Crl.M.C is, in these circumstances, dismissed, but with the observation that the petitioner shall be at liberty to apply to the Magistrate for identical relief and the learned Magistrate must pass appropriate orders expeditiously.

(R.BASANT, JUDGE)

rtr/-